

## Heartland Optical REDEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska, (City), and HEARTLAND OPTICAL, INC., a Nebraska corporation, with a place of business at 650 N. 27<sup>th</sup> St., Lincoln, NE 68503, (Heartland).

The parties agree:

1. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the North 27th Street Redevelopment Plan (Redevelopment Plan) providing for redevelopment in the general area of North 27th St. from O Street to Fair Street, a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (City Clerk).
2. City owns the land and buildings generally known as 1010 N 27 Street (parcel 1) and 3 other unnumbered lots on Apple Street (Parcel 2) and legally described as: Parcel 1: HARTZ & BRACE'S SUB EX ST LOT 25 & N 26.7' LOT 26; Parcel 2: HARTZ & BRACE'S SUB EX ST LOTS 28, 29 and 30; and the North 72.7 feet of the vacated north south alley adjacent to Lot 28 (TBA Property).
3. The City will acquire and assemble the redevelopment site and transfer the same to Heartland for redevelopment at fair value consistent with and for purposes of redevelopment according to the Plan.
4. Heartland will redevelop the site to create a private development including new construction and improvements for commercial/retail use, including parking and related uses as provided in this Agreement.
5. The City will acquire the TBA Property and shall prepare the parcels as a single redevelopment site (Redevelopment Site) including necessary demolition of existing structures, construction of certain improvements, site preparation of Redevelopment Site, and conveyance to Heartland for redevelopment as provided herein.

6. The City and Heartland enter into this Agreement to implement the redevelopment of the Heartland Improvements and the Public Improvements (collectively Project or Project Improvements) for the purposes and in accordance with the Redevelopment Plan.
7. The City and Heartland mutually agree that the redevelopment of the Project is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.
8. Attachments and Schematic Drawings for the Project. The Project Time Line is attached as Attachment A. The Project Site is shown in Attachment B. The Project Schematic Drawings have been prepared by Heartland as shown in Attachment C. An architectural program statement is attached as Attachment D. The Uses and Sources of Funds related to the Project is attached as Attachment G. The Schematic Drawings for the Project have been approved by the City and Heartland.
9. Construction. Heartland will use its best efforts to substantially complete construction of the Heartland Improvements within 36 months following the Closing of the purchase and sale of Redevelopment Site. The City shall complete the Public Improvements, except sidewalk and streetscape treatment, by the time of the Closing. City shall complete the sidewalk and streetscape improvements within 60 days of certificate of completion for the Heartland Improvements.
10. Intentionally omitted.
11. Construction Documents; Changes in Construction Documents. The Mayor & Heartland shall be entitled to review and approve the exterior portions of the Construction Documents for the Project Improvements, and such approval shall be granted if the Construction Documents are consistent with the Schematic Drawings and the terms and conditions of this Agreement. Neither Heartland nor the City shall have unilateral authority to initiate changes to the exterior portions of the Construction Documents without the other party's approval. A party requesting a change shall submit any material changes in the Construction Documents to the other party for approval which approval shall not be unreasonably withheld. A party shall be deemed to have approved the submitted Construction Documents or proposed changes thereto unless the

requesting party receives written notice within fourteen (14) days after receipt of the proposed Construction Documents or proposed changes. The requesting party shall be obligated to pay the additional costs and fees of the Architect reasonably incurred as a result of such changes.

12. Heartland's Responsibilities. Heartland will, at its own cost and expense, purchase Redevelopment Site from the City as provided in this Agreement at fair value to complete the Heartland Improvements in connection with the Project. Heartland, at its own cost and expense, shall design and construct an appropriate commercial/retail use thereof consisting of not less than 4,765 sq. feet according to approved plans as provided in this Agreement and commence construction within 30 days after Closing. The development is intended to provide for market rate commercial and retail space, subject to economic conditions. The improvements for Redevelopment Site shall be substantially completed within 36 months after closing.

13. Grant of Easements to City. At Closing, Heartland will grant to the City without additional consideration the appropriate public access and utility easements in a form acceptable to the City Attorney as they relate to proposed parking along apple street and permanent easement for widening and pedestrian/streetscape improvements on 27<sup>th</sup> and Apple streets as shown on Attachment E.

14. Grant of Right-of-Way. At Closing, if needed, Heartland will grant to the City without additional consideration the appropriate and right-of-way as may be required by applicable city specifications or construction standards related to the Public Improvements and access for Apple Street in a form acceptable to the City Attorney.

15. Architect and Landscape Designer. Heartland will use the services of Pearson Achitects as Project Architect and Melinda Pearson as Project Landscape Designer or another architect or landscape designer acceptable to the City.

16. Representations. Heartland represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of Redevelopment Site and not for speculation in land holding.

17. Restrictions on Assignments of Rights or Obligations. Heartland represents and agrees that prior to completion of Heartland's Responsibilities provided for above there shall be no sale or transfer of the

Redevelopment Site Project or assignment of its rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld), other than mortgages, and involuntary transfers by reason of death, insolvency, or incompetence. The City shall retain the right of first refusal for any subsequent transfer or sale of all or substantially all of Heartland's interest as redeveloper in the property. Such right of first refusal shall be valid for a period of 60 days after Heartland or its successors or assigns provide written notice of a pending sale to the Mayor. The right of first refusal must be exercised by the Mayor in writing within such 60 day period upon the same terms and conditions of the pending sale as provided to and verified by the Mayor. The right of first refusal shall not apply to financing permitted under this Agreement, and shall expire December 31, 2020, or upon expiration of the tax increment period related to the redevelopment site. The City shall be entitled to require, as conditions to any required approval, that:

a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Heartland; and

b. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Heartland under this Agreement; and

c. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefore shall be indicated to Heartland in writing.

18. City Duties. City at its own cost and expense shall:

a. Identify for Heartland the existing public storm and sanitary sewer, and other utility easements on the Redevelopment Site property as soon as reasonably possible and terminate without additional consideration any utility easements no longer needed no later than the Closing. If the City requires any existing utility easement(s) to remain and Heartland in good faith concludes that the Project cannot

proceed with those utility easement(s) remaining in place, then Heartland shall have the right prior to Closing to terminate this Agreement. If this Agreement is terminated by Heartland, neither party shall be liable to the other party for damages due to termination.

b. Prior to Closing, City shall complete the necessary environmental testing, demolition, site preparation and the Public Improvements (defined below) and approvals for the City to assemble and prepare the Redevelopment Site for the Project and complete the transfer of the TBA Property for purposes of constructing Redevelopment Site, preserving necessary easements and other appropriate use restrictions provided under this Agreement. "Site preparation" shall include preparation, governmental approvals, utility service line(s) relocation, demolition, removal, hauling and landfill charges, filling cavities and holes, including but not limited to basements, footings and foundations, and rough site grading in anticipation of the buildings shown on Attachment C.

19. Public Improvements. As part of the Project, City, at its expense, will contract, design, and pay for the following Public Improvements:

- a. Acquisition of TBA Property;
- b. Demolition and site preparation;
- c. Public sidewalk and streetscape treatment in the 27<sup>th</sup> and Apple Street rights-of-way;
- d. Set-back surfacing on Apple St., including curb cut and Apple Street Access.
- e. Manhole/inlet relocation

20. Transfer of Property.

a. Sale and Purchase. At Closing, the City shall sell and convey to Heartland the Redevelopment Site subject to the terms and conditions of this agreement in consideration and for fair value of Three Thousand Dollars (\$3,000) of which One Thousand Dollars (\$1,000.00) (Earnest Money Deposit) has been received by the City on the date hereof with a balance payable at Closing, subject to adjustments and prorations as herein provided.

b. Right of Entry, Testing and Demolition. Upon execution of this Agreement, City shall grant to the Heartland the Right of Entry as shown on Attachment F, which is attached hereto and incorporated

herein, to permit entry upon the TBA Property for testing and compaction studies in accordance with this Agreement.

c. Closing. The closing of the purchase and sale of Redevelopment Site shall take place at the offices of the City of Lincoln's Urban Development Department, 808 P Street, Suite 400 Lincoln, Nebraska on June 6, 2005 at 10:00 a.m. However, Closing shall be automatically extended until the Lincoln City Council has approved the sale as provided by law, or at such other time, date and place as the parties may mutually agree (Closing) not later than July 1, 2006.

d. Use Restrictions, Title and Possession. City agrees to deliver at Closing a warranty deed conveying to Heartland marketable title to Redevelopment Site, subject to easements for public access and utilities as provided in this Agreement, the disclosed Parcel 2 Restrictions, and the following use restrictions under the Nebraska Community Development Law, which restrictions have been negotiated and considered to constitute the basis for the fair value determined for the Redevelopment Site:

i. Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 75% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations;

ii. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 75% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

iii. Any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service.

iv. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or petroleum store.

v. Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law.

vi. Any business whose predominant operation is warehousing or storage of goods, materials or merchandise.

vii. Any business involving a residential use, sale or display of weapons, self service laundromat, off-site outdoor advertising on the premises, cell tower, radio telecommunication or other communication tower, illegal activities, or sale of any illegal goods or products.

e. Title Insurance. On or prior to Closing the City shall provide Heartland and its counsel with a commitment for an owner's policy of title insurance which insures marketable title to the TBA Property respectively, subject only to the easements, restrictions (including those provided in this Agreement as applied to Redevelopment Site) and other matters of record. Written notice of any easement, restriction or other matter affecting title to Redevelopment Site that is unacceptable to Heartland (other than the disclosed Parcel 2 Restrictions) shall be delivered prior to Closing. The City shall have a reasonable period, not exceeding thirty (30) days, to cure any unacceptable easement, restriction or other matter affecting title. The premium for the title insurance policy shall be paid by the City.

f. TBA Property. Any special assessment arising out of any improvements completed or under construction prior to Closing of the TBA Property, whether then levied or unlevied, assessed or unassessed, shall be borne by City up to the date of Closing. City shall pay all taxes related to the TBA Property respectively for 2004 and all prior years and any such taxes for 2005 shall be prorated to the date of Closing and based on the most recent property valuation and the most recent levy.

g. Transfer Taxes. City shall pay any and all transfer taxes or similar fees which are payable upon the recording of the instruments of transfer.

21. Representations and Warranties of City. City represents and warrants to Heartland as follows:

a. Power. The City is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and to enter into this Agreement and perform the obligations hereunder.

b. Sale Approval. Pursuant to law all sales of property owned by the City must be approved by the City Council after an appraisal of the fair market value. The transfer of property is conditioned on the approval of the sale by the City Council as provided by law.

c. Authority Relative to Agreement. This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. At the time of closing for the TBA Property, the City will be the owner of the TBA Property and no other persons will have any interest in such real estate, except as set forth in this Agreement. The City is not the owner of the TBA Property, but as of the date of execution of this Agreement, City has duly authorized all actions necessary to effect acquisition of the TBA Property.

d. Brokers. The City has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Heartland to pay any finder's fee, brokerage or agent's commission or other like payment in connection with this Agreement or the consummation of the transactions contemplated, and City is not aware of any claim or basis for any claim for same.

e. Special Assessments and Liens. There are no costs or expenses of any kind or character whatsoever associated with the construction or maintenance of any street, sidewalk, parking area or utility improvement surrounding or serving the area adjacent to the TBA Property assessed against the TBA Property up to the date of Closing.

f. Floodplain. The TBA Property is not located in a designated floodplain.



g. "As Is". The City has sold the TBA Property as is, making no representations or warranties concerning it of any kind or nature, except as is expressly set forth in this Agreement, including specifically the obligation of the City to remove any basements, footings, or foundations as described in paragraph 18(b).

22. Representations and Warranties of Heartland. Heartland represents and warrants to City as follows:

a. Organization; Power; Good Standing. Heartland is a corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

b. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Heartland and constitutes a legal, valid and binding obligation of Heartland, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

c. Effect of Agreement. The execution, delivery and performance of this Agreement by Heartland have been duly authorized by all necessary action by Heartland and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Heartland, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Heartland is a party.

d. Brokers. Heartland has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of City to pay any finder's fee, brokerage or agent's commission, or other like payment in connection with this Agreement or the consummation of the transactions contemplated, and Heartland is not aware of any claim or basis for any claim for same.

23. Survey. Upon the written request of Heartland, the City shall provide Heartland, at City's sole cost and expense, an ALTA land title survey of Redevelopment Site.

24.      Inspection and Testing. At any time after the date of this Agreement, the City, Heartland and their respective employees and agents shall have the right to enter upon Redevelopment Site and perform such tests and inspections as the City deems necessary for site preparation and Heartland deems necessary to determine suitability of Redevelopment Site for its intended use. Unless otherwise approved by the other party in writing, the testing party shall restore Redevelopment Site to original condition if tests alter the grade, compaction, or vegetation. As to the TBA Property, the City represents that as of the date of this Agreement it has no knowledge of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement the City has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the TBA Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to Hazardous Materials.

The City has completed a phase two environmental audit for Redevelopment Site. The City agrees to provide a complete copy of the phase two report to Heartland.

25.      Valuation of Property Within the Project Area. The City intends to use the ad valorem tax provisions set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (as amended). The tax increment revenues which are to be used to pay debt service for the Project will be derived from the increased valuation from redeveloping Redevelopment Site as provided in this Agreement. So long as any of the debt issued with respect to the Project funds remain outstanding and unpaid, Heartland agrees not to contest any taxable valuation assessed for Redevelopment Site which does not cumulatively exceed \$450,000; provided that the construction of Redevelopment Site is completed as provided in this Agreement.

26.      Restriction on Transfer. Heartland will not, for a period of fifteen (15) years after the effective date of the ad valorem tax provision, or so long as the tax increment indebtedness remains outstanding whichever period of time is shorter (tax increment period), convey any lot within Redevelopment Site to any entity

which would result in the lot or dwelling built upon such lot being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions..

27. Agreement to Pay Taxes. Heartland agrees to pay all real property taxes levied upon Redevelopment Site prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the tax increment period, but the City in no way waives the statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the lots or improvements for tax purposes.

28. Financing Creating Encumbrances Restricted.

a. Prior to completion of Redevelopment Site, as certified by the Mayor, neither Heartland nor any successors in interest to Redevelopment Site as redeveloper shall engage in any financing or any other transaction creating any Mortgage upon the Real Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any of such Redevelopment Site, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the redevelopment Project. Heartland or any successor in interest as redeveloper shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to Redevelopment Site, and shall promptly notify the City of any Mortgage that has been created on or attached to Redevelopment Site whether by voluntary act of Heartland or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of Redevelopment Site and which is contested by Heartland, then Heartland may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Heartland's lender to permit Heartland to avoid or prevent foreclosure of such encumbrance or lien. In addition, Heartland agrees that prior to completion of Redevelopment Site, as certified by the Mayor, any loan proceeds secured by any interest in Redevelopment Site shall be used solely for the payment of costs and expenses related to the development of the Project based on the Architect's certification as to percentage of completion. Heartland shall provide a copy of all draw requests and bank approvals related to the Project to the Director of Urban Development in a timely fashion.

b. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time when any casualty damage to the Property has occurred and has not been fully restored, any party who obtains title to any portion of the Redevelopment Site from or through Heartland or the holder of any Mortgage or any other purchase at foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said party and to complete construction or restoration within twenty-four (24) months from the date of such acquisition.

c. Notice of Default. Whenever the City shall deliver any notice or demand to Heartland with respect to any breach or default by Heartland of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each Holder of any Mortgage at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

d. Option to Cure. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of Redevelopment Site by Heartland or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage; provided, that if the breach or default is with respect to construction of Redevelopment Site, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize.

e. Rights Applicable to Other Forms of Encumbrance (Deed of Trust). The rights and obligations of this Agreement relating to Mortgages of any portion of Redevelopment Site shall apply to any other type of encumbrance on any of Redevelopment Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

29. Damage or Destruction of Redeveloper's Property. During the construction period, Heartland agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies

in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Heartland agrees to restore the Project to its prior condition within twelve (12) months from the date of the damage or destruction, and shall diligently pursue the same to completion. In the event Heartland fails to restore the same for any reason, Heartland shall pay to the city the amount of tax increment received by the City in the preceding year times the number of years remaining in the tax increment period. During the tax increment period, Heartland shall include by restrictive covenant an enforceable obligation on the owner or tenant in possession to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to the owner or tenant's obligation to restore the Project to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

30. Condemnation. If during the tax increment period all or any portion of Redevelopment Site is condemned by a condemning authority other than the City, and the condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemnor an interest in the property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

31. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Heartland, the party in default shall, upon written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. In the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

32. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

33. Delay in Performance For Causes Beyond Control of Party. The parties or their successors or assigns shall not be in default of their obligations for delay in performance due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, acts of the federal or state government or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this section is that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of improvements shall be extended for the period of delay. However, in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall within twenty (20) days after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

34. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of any one or more remedies shall not preclude the exercise by it of any other remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if in writing and only to the extent specified in writing.

35. Conflicts of Interest: City Representatives Not Individually Liable. No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Heartland or any successors in interest due to any default or breach by the City under the terms of this Agreement.

36. Approvals. For purposes of this Agreement and the approvals and disapprovals required, Heartland shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of them. City shall be entitled to rely on the written approval of the President of Heartland as constituting the approval or disapproval of Heartland.

37. Notices and Demands. A notice under this Agreement by either party to the other shall be deemed delivered on the date it is postmarked, sent by registered or certified mail, postage prepaid, or delivered

personally to Heartland, at 650 N. 27<sup>th</sup> St., Lincoln, Nebraska 68503, or the City, to the Office of Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this Section.

38. Access to Project Area. During construction of the Project, Heartland shall permit the representatives of the City to enter all areas of Redevelopment Site and at any and all reasonable times, as the City may deem necessary for the purposes of inspection of work being performed in connection with the construction of the facility.

39. Provisions Run With the Land. This Agreement shall run with Redevelopment Site and shall inure to and bind the parties and their successors in interest.

40. Headings. Headings of the sections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

41. Severance and Governing Law. Invalidation of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect . This Agreement shall be construed and governed by the laws of Nebraska.

42. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the tax increment indebtedness, whichever first occurs.

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

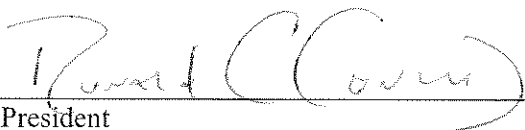
CITY OF LINCOLN, NEBRASKA,  
A Municipal Corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Coleen J. Seng, Mayor

Executed by Heartland Optical, Inc., this 20 day of July, 2005.

HEARTLAND Optical, INC.,  
a Nebraska corporation

By:   
President

STATE OF NEBRASKA       )  
                                      ) ss.  
COUNTY OF LANCASTER    )

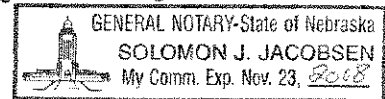
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
by Coleen Seng, Mayor of the City of Lincoln, Nebraska. on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA       )  
                                      ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 20 day of July,  
2005, by Ronald C. Conrad, President of **Heartland Optical Company, Inc.**, a Nebraska  
corporation on behalf of the corporation.

*Solomon J. Jacobsen*  
Notary Public





## **Attachment A**

### Time Line

August 15, 2005    City Council Approval

August 22, 2005    Property Closing

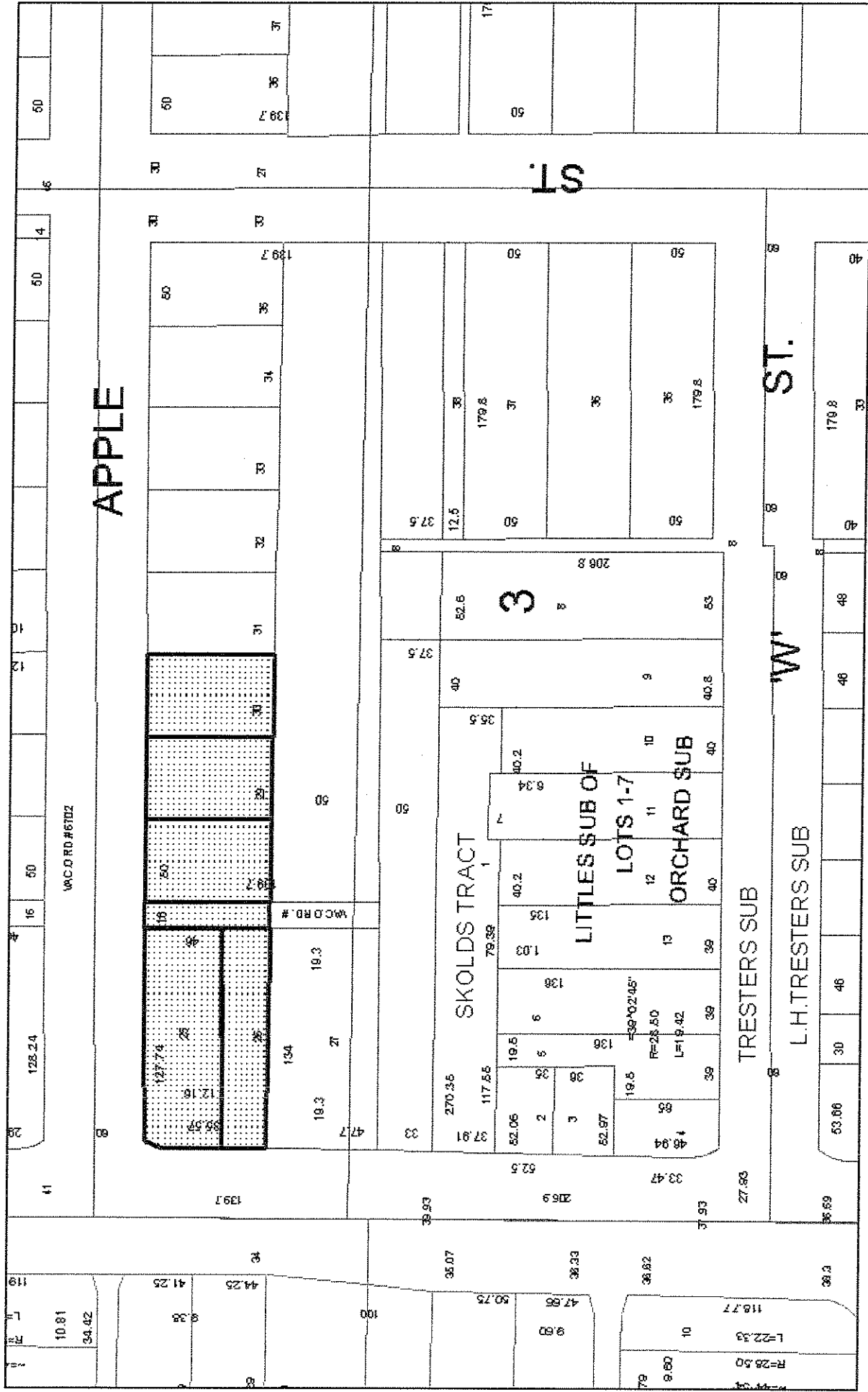
August 23, 2005    Utility relocation

August, 2005        Groundbreaking


## Attachment B

Map showing land comprising the Redevelopment Site.

# Redevelopment Site



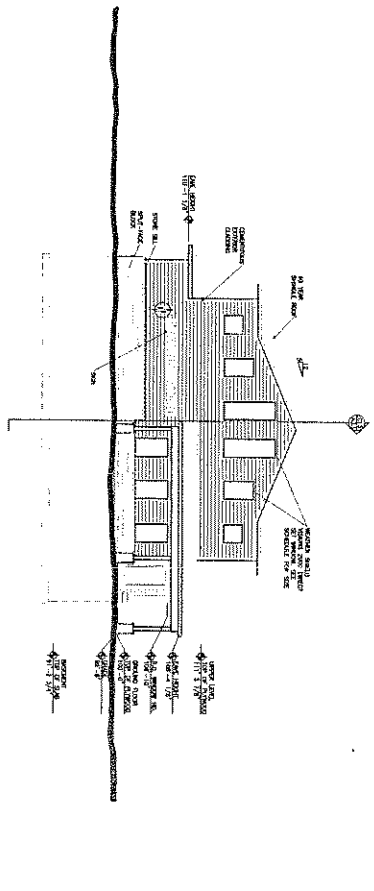
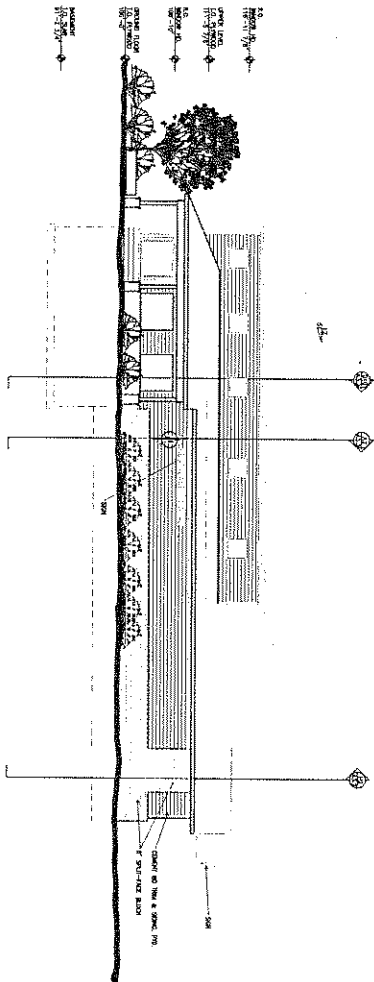
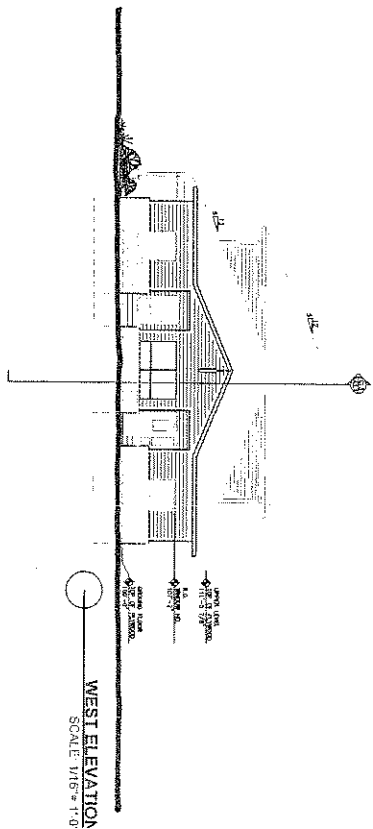
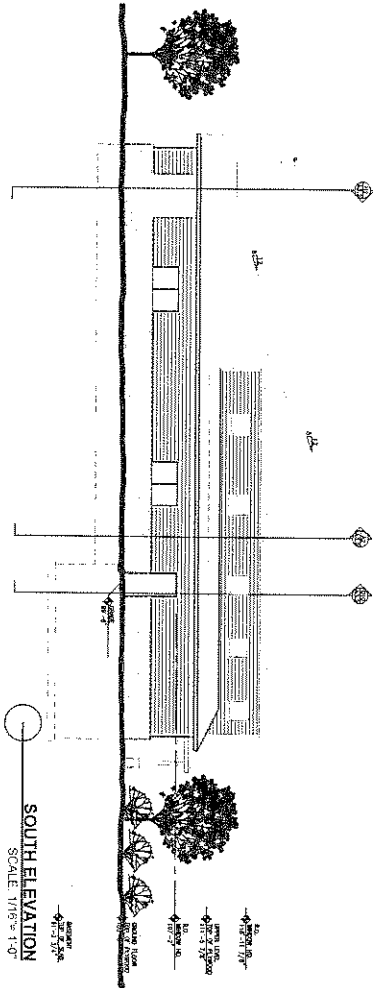
## Legend

 Redevelopment Sites (lots 25, 26 and 28-30)

## Attachment C


### Project Schematic Drawings





NORTH ELEVATION  
SCALE 1/16" = 1'-0"

EAST ELEVATION  
SCALE 1/16" = 1'-0"

 <b>Pearson Architects</b> 648 N. 31st St. Lincoln, NE 68503 P 402.472.1851 F 402.472.1020		Project No. 0448 Project Title: HEARTLAND OPTICAL	
Drawn By: CCCCION Checked By: Pearson Date Issued: 12/22/05		Description: ELEVATIONS 1/16" = 1'-0"	
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## Attachment D

### Architectural Program Statement for Redevelopment Site

Programmed space	Size (w x l)	Area of space	Quantity	Total Area (s.f.)
<b>Offices</b>	10 x 10	100	3	300
Open Office	12 x 20	240	1	240
Restrooms	6 x 8	45	1	45
Jan/Mech	10 x 10	100	1	100
Circulation				350
<b>Second Floor</b>				<b>1,035</b>
Laboratory	27 x 22	580	1	580
Dispensary	23 x 35	790	1	790
Reception/Waiting	10 x 20	200	1	200
Filing	9 x 12	100	1	100
Utility Closet		20	1	20
Public Restrooms	6 x 8	48	2	96
Exam Rooms	10 x 12	120	3	360
Lab Office	18 x 30	530	1	530
Break Room	10 x 13	130	1	130
Dr. Office	9 x 12	100	1	100
<b>Subtotal</b>				<b>2,906</b>
Circulation				740
Stairs	4 x 20	80	1	80
<b>First Floor</b>				<b>3,726</b>

Size or Quantity		Cost/s.f. or estimate	Potential cost
New construction 1st floor	3,726	\$110.00	\$409,860
New construction 2nd floor	1,035	\$90.00	\$93,150
New construction Basement	1,000	\$30.00	\$30,000
Parking per car	23	\$1,000.00	\$23,000
Site utilities/amenities/street pk	1	\$50,000.00	\$50,000
Construction Cost Estimate			<b>\$606,010</b>
Architectural/Engineering	10%		\$60,601
Rendering/Reimbursables			\$2,000
Contingency	5%		\$30,301
Equipment/Furnishings	0		\$75,000
Total potential project cost			<b>\$773,912</b>



## **Attachment E**

Map showing public access and utility easements in east/west driveway, together  
with right-of-way and permanent easement for widening and  
pedestrian/streetscape improvements in Vine Street

Attachment F

RIGHT OF ENTRY AGREEMENT

## **RIGHT OF ENTRY AGREEMENT**

THIS RIGHT OF ENTRY AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_, 2005, between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (City), and HEARTLAND OPTICAL, INC., a Nebraska corporation, with a place of business at 650 N. 27<sup>th</sup> St., Lincoln, NE 68503. (Heartland).

### **RECITALS**

1. City owns the land and buildings depicted on Attachment A generally known as 1010 N 27 Street (parcel 1) and 3 other unnumbered lots on Apple Street (Parcel 2) and legally described as: Parcel 1: HARTZ & BRACE'S SUB EX ST LOT 25 & N 26.7' LOT 26; Parcel 2: HARTZ & BRACE'S SUB EX ST LOTS 28, 29 and 30; and the North 74.7 feet of the vacated north south alley adjacent to Lot 28 (Property).
2. In order to accommodate the Construction schedule for planned improvements on the Property, the parties are mutually desirous of entering into this Right of Entry agreement.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

### **I. Right of Entry**

- a. In consideration of the mutual benefits and obligations of this agreement, City hereby grants a right of entry from City to Heartland for the Property and for the following purposes and no others:
  1. Topographical Survey, including locating boundaries, markers, utilities and improvements as well as grade and other pertinent details related to the City's planned improvements.
  2. Geotechnical Soil Sampling and compaction, including boring and other sampling or testing of surface and subsurface materials to determine soil conditions and physical characteristics and other pertinent details related to the City's planned improvements; Provided, that environmental testing shall only be done as provided in subsection 3 of this paragraph.

3. Site preparation as provided in the Heartland Optical Redevelopment Agreement.
- b. In consideration of the Right of Entry above Heartland agrees to provide to City at no cost the final version, if any, of: 1) topographic survey, 2) geological report including boring summaries and reports.
- c. It is understood and agreed that Heartland shall not be liable for trespass or any other damages or takings of any kind arising out of entering on to the property for the purposes provided herein.
- d. Heartland shall require its contractor or any subcontractors thereof to carry Contractor's Public Liability and Property Damage Insurance as specified in the City of Lincoln Municipal Code or City of Lincoln Standard Specifications for Municipal Construction, where applicable.

## **II. Indemnification.**

- a. Indemnification by HEARTLAND. HEARTLAND agrees to indemnify and hold City harmless against, and will reimburse City upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against City in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or non fulfillment of any term, provision, covenant, or agreement on the part of HEARTLAND contained in this Agreement.
- b. Indemnification by City. City agrees to indemnify and hold HEARTLAND harmless against, and will reimburse HEARTLAND upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against HEARTLAND in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or non fulfillment of any term, provision, covenant, or agreement on the part of City contained in this Agreement.
- c. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections II(a) or II(b) hereof:
  1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

### **III. Severability.**

If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

### **IV. Construction.**

The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

### **VI. Authority.**

This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms. City is the owner of the Property and no other persons have any interest in such real estate which would detrimentally affect the Heartland's ability to use the Right of Entry for the purposes stated herein.

### **VII. Integration and Amendments.**

This agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this agreement. This agreement may be amended or modified only in writing signed by both Parties.

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

CITY OF LINCOLN, NEBRASKA,  
A Municipal Corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Coleen J. Seng, Mayor

Executed by Heartland Optical, Inc., this 20 day of July, 2005.

HEARTLAND OPTICAL, INC.,  
a Nebraska corporation

By: Ronald C. Conrad  
, President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

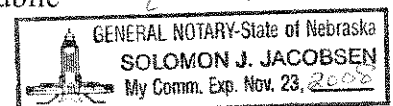
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska. on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 20 day of JULY, 2005, by RONALD C. CONRAD, President of Heartland Optical Company, Inc., a Nebraska corporation on behalf of the corporation.

Solomon J. Jacobsen  
Notary Public



## Attachment G

### Uses & Sources of Funds

## Attachment G

### Heartland Optical Uses and Sources of Funds

#### Uses:

Construction of 4,765 ft commercial building.	\$925,204
Public Improvements*	90,000
<b>TOTAL</b>	<b>\$1,015,204</b>

#### Sources:

Heartland Optical Inc.	\$850,204
N. 27 <sup>th</sup> Street Tax Increment Financing	87,000
Community Development Block Grant Funds	75,000
Land Sales Proceeds	3,000

<b>TOTAL</b>	<b>\$1,015,204</b>
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\* Storm Sewer, Storm Inlet, Sidewalks, Landscaping, Demolition, On-Street Parking, Phase II Environmental, Site Survey, Approach.